



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

Advance Copy Via Facsimile (609) 689-1670

April 10, 2007

William E. Baroni, Jr., Esq.  
27 Marjorie Way  
Hamilton, New Jersey 08690

RE: MUR 5690  
Jim Gerlach for Congress Committee  
and Michael DeHaven, in his official  
capacity as treasurer

Dear Mr. Baroni:

On March 28, 2007, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on your client's behalf in settlement of violations of 2 U.S.C. §§ 434(b)(2), 434(b)(2)(A) and 434(b)(3)(A), provisions of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. *See* 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that regarding the civil penalty, the first payment is due within 30 days of the conciliation agreement's effective date and the other payments are due pursuant to the terms of the conciliation agreement. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Thurber", is written over a horizontal line.

J. Cameron Thurber  
Attorney

Enclosure  
Conciliation Agreement

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**BEFORE THE FEDERAL ELECTION COMMISSION**  
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In the Matter of )  
Jim Gerlach for Congress Committee and )  
Michael DeHaven, in his official capacity ) MUR 5690  
as treasurer )  
)  
)  
)

**CONCILIATION AGREEMENT**

This matter was initiated by a signed, sworn and notarized complaint filed by Lois  
Murphy. The Federal Election Commission ("Commission") found reason to believe that the Jim  
Gerlach for Congress Committee and Michael DeHaven, in his official capacity as treasurer  
("Respondents" or the "Committee"), violated 2 U.S.C. §§ 434(b)(2), (2)(A) and 434(b)(3)(A),  
and 11 C.F.R. § 102.17(c)(8)(i)(B).

NOW, THEREFORE, the Commission and the Respondents, having participated in  
informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree  
as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of  
this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C.  
§ 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action  
should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

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1                   1. The Committee is a “political committee” within the meaning of 2 U.S.C.  
2     § 431(4), and is an “authorized committee” within the meaning of 2 U.S.C. § 431(6).

3                   2. Alan Randzin was treasurer of the Committee at the time the violations  
4     described herein occurred. Michael DeHaven became treasurer of the Committee on November  
5     9, 2005, after the violations described herein occurred and is named herein only in his official  
6     capacity.

7                   3. The Federal Election Campaign Act of 1971, as amended (“the Act”), requires  
8     that political committees identify in its reports each person “who makes a contribution to the  
9     reporting committee during the reporting period” whose aggregated contributions for the election  
10    cycle are in excess of \$200. 2 U.S.C. § 434(b)(3)(A). If such contributions are transferred to a  
11    political committee from a joint fundraising committee, the political committee is required to file  
12    a Memorandum Schedule A listing the original contributors after receiving each disbursement  
13    from the joint fundraising committee. 11 C.F.R. § 102.17(c)(8)(i)(B); *see* 2 U.S.C.  
14    §§ 434(b)(2)(F), (3)(A). The information on the Memorandum Schedule A must disclose the  
15    name, address, employer, occupation and date, campaign designation and amount of contribution  
16    for each person whose aggregated contributions exceed \$200. 11 C.F.R. §§ 100.12;  
17    102.17(c)(8)(i)(B); 104.3(a)(4). Furthermore, the Act requires that each report from an  
18    authorized political committee disclose the total amount of receipts, including all contributions,  
19    for the election cycle, and the total amount of contributions received from persons other than  
20    committees for the reporting period. 2 U.S.C. §§ 434(b)(2), 434(b)(2)(A); *see* 11 C.F.R.  
21    § 104.3(a).

22                   4. On December 20, 2004, a joint fundraising committee, the 2004 Joint  
23    Candidate Committee II (“JCC II”), transferred \$8,832.21 to the Committee. However, the

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Committee's 2004 Year-End Report, filed on January 26, 2005, failed to include an itemized list of those who contributed more than \$200 as a memo entry on Line 12 of the Detailed Summary Page. The six subsequent amended 2004 Year-End Reports also failed to list the contributors.

5. The Detailed Summary Page of the 2004 Post-General Election Report filed April 14, 2005 shows total contributions received from the period November 3 through November 22, 2004 in the amount of \$17,339. As November 3, 2004 began a new election cycle, this amount reflected the total amount of contributions received to date for the 2005-2006 election cycle. The Committee's fourth amended 2004 Year-End Report, filed on July 13, 2005, shows an additional \$7,800 in contributions received by the Committee between November 23 and December 31, 2004. Therefore, the election cycle-to-date contributions received column on the Summary Page of the fourth amended 2004 Year-End Report should have shown a total of \$25,139. Instead, this Report lists the total contributions received for the cycle in the amount of \$2,180,307, or \$2,155,168 more than what should have been reported in this column. The amended 2005 April and July and original 2005 October Quarterly Reports all reflect this error. Separately calculating the contributions received in each of these periods, combined with the \$17,339 shown in the 2004 Post-General Election Report and the \$7,800 shown in the fourth amended 2004 Year-End Report, as of the period ending September 30, 2005, the Committee actually received \$1,153,683 in contributions for the election cycle. However, due to the continuing inclusion of the inflated amounts, the Committee reported receiving contributions in the amount of \$3,310,453, a difference of \$2,156,770. On January 19, 2006, the Committee corrected the errors by amending the affected reports.

6. The Committee's 2005 October Quarterly Report, filed on October 15, 2005, shows -\$8,911.21 in unitemized contributions on line 11(a)(11) of the Detailed Summary Page of

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Receipts. The error affected other calculations on the Detailed Summary Page, including lines 11(a)(i), 11(a)(ii), 11(e) and 20(c), and when the -\$8,911.21 was added to the amount of itemized contributions, \$221,550.54, it showed an incorrect total amount of individual contributions of only \$212,749.35. On January 18, 2006, the Committee corrected the errors by amending the affected report.

7. The Commission has made no findings that the violations in this matter were knowing and willful.

V. 1. Respondents failed to itemize on a Memorandum Schedule A information concerning contributors after receiving a disbursement from a joint fundraising committee, in violation of 2 U.S.C. § 434(b)(3)(A) and 11 C.F.R. § 102.17(c)(8)(i)(B). Respondents will cease and desist from violating 2 U.S.C. § 434(b)(3)(A) and 11 C.F.R. § 102.17(c)(8)(i)(B).

2. Respondents failed to correctly disclose the total contributions for the election cycle-to-date in the 2004 Year-End Report, and in the 2005 April, July and October Quarterly Reports, in violation of 2 U.S.C. § 434(b)(2). Respondents will cease and desist from violating 2 U.S.C. § 434(b)(2).

3. Respondents failed to properly disclose contributions refunded and instead reported them as unitemized contributions received in the 2005 October Quarterly Report, in violation of 2 U.S.C. § 434(b)(2)(A). Respondents will cease and desist from violating 2 U.S.C. § 434(b)(2)(A).

VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of One Hundred and Twenty Thousand Dollars (\$120,000), pursuant to 2 U.S.C. § 437g(a)(5)(A). The civil penalty will be paid as follows:

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1                   1. A payment of Fifty Thousand Dollars (\$50,000) is due no more than thirty (30)  
2 days from the date this Agreement becomes effective;

3                   2. Thereafter, three consecutive monthly installment payments, the first two  
4 consisting of Twenty-Five Thousand Dollars (\$25,000) each and the last consisting of Twenty  
5 Thousand Dollars (\$20,000);

6                   3. Each such installment shall be paid within thirty (30) days of the previous  
7 installment;

8                   4. In the event that any installment payment is not received by the Commission  
9 by the fifth day after it becomes due, the Commission may, at its discretion, accelerate the  
10 remaining payments and cause the entire amount to become due upon ten days written notice to  
11 Respondents. Failure by the Commission to accelerate the payments with regard to any overdue  
12 installment shall not be construed as a waiver of its right to do so with regard to further overdue  
13 installments.

14               VII. The Commission, on request of anyone filing a complaint under 2 U.S.C.  
15 § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance  
16 with this agreement. If the Commission believes that this agreement or any requirement thereof  
17 has been violated, it may institute a civil action for relief in the United States District Court for  
18 the District of Columbia.

19               VIII. This agreement shall become effective as of the date that all parties hereto have  
20 executed same and the Commission has approved the entire agreement.

21               IX. Respondents shall have no more than 30 days from the date this agreement  
22 becomes effective to comply with and implement the requirement contained in this agreement  
23 and to so notify the Commission.

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X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

~~Lawrence H. Norton~~ *Thomesenia P. Duncan*  
~~General Counsel~~ *Acting General Counsel*

BY:

*Rhonda J. Vosdigh*

Rhonda J. Vosdigh  
Associate General Counsel

*4/10/07*  
Date

FOR THE RESPONDENTS:

*Michael DeHaven*

Michael DeHaven  
Treasurer

*3/20/07*  
Date

*William E. Baroni, Jr.*

William E. Baroni, Jr., Esq.  
Counsel for Respondents

*3/19/07*  
Date

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